IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

Crl.MC.No. 2112 of 2007()

CMP.2096/2007 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR
CRIME NO.401/07 OF KALADY POLICE STATION

.....

PETITIONER: PETITIONER IN C.M.P NO.2096/2007

ALI, S/O.MOHAMMED, ANDETH HOUSE,
MEKKALADY KARA, KALADY P.O.

BY ADV. SRI.BENOY K.KADAVAN

RESPONDENTS:

SUB-INSPECTOR OF POLICE,
KALADY POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2112 of 2007

Dated this the 11th day of July, 2007

O R D E R

The petitioner is aggrieved by Annexure-VI order under which a direction is issued under Section 457 Cr.P.C to release the vehicle belonging to the petitioner subject to conditions. Two conditions have been imposed. Firstly the petitioner has been directed to pay such amount as is ordered by the District Collector under the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. Secondly it has been directed that a bond be executed for an amount of Rs.1 lakh.

2. The grievance of the petitioner is that no order has been passed by the District Collector and at any rate, the District Collector is not legally competent to pass any such orders. The learned Magistrate cannot, in these circumstances, direct the petitioner to comply with an illegal order without jurisdiction passed by the District Collector.

3. The vehicle is exposed to sun and rain and I am satisfied that appropriate directions must be issued to ensure that the vehicle is not left to suffer damage and deterioration. All courts must remind themselves of the dictum in **Sunder bhai Ambalal Desai v. State of Gujarat** [A.I.R 2003 S.C 638]. I am in these circumstances satisfied

that appropriate modified direction can be issued which will serve the interests of all concerned.

4. In the result, this Crl.M.C is, allowed in part. It is directed that the vehicle shall be released to the petitioner on the following terms and conditions.

i) The petitioner shall deposit an amount of Rs.20,000/- (Rupees Twenty thousand only) as cash security before the learned Magistrate;

ii) The petitioner shall execute a bond for Rs.1 lakh with two solvent sureties each for the like sum undertaking to produce the vehicle as and when directed;

iii) The vehicle shall now be released to the petitioner without insisting on the petitioner complying with the order dated 7.7.07 passed by the District Collector, subsequently (this petition was filed on 29.06.07) directing him to pay the amount of Rs.20,000/-. The amount of Rs.20,000/- shall remain in court. The petitioner's liberty to challenge the order dated 7.7.07 shall remain. The amount of Rs.20,000/- in deposit shall either be released to the District Collector or the petitioner at the end of the proceedings, depending on the success of the challenge of the order dated 07.07.07.

(R.BASANT, JUDGE)

rtr/-